IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

FRIDAY, THE TWENTY FIRST DAY OF JANUARY
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE M.LAXMAN

I.A.No.1 of 2017 (ASMP.No.477 of 2017),
I.A.No.2 of 2017 (ASMP.No.2262 of 2017) &
I.A.No.3 of 2017 (ASMP.No.4013 of 2017)
IN
A.S.NO.368 OF 1997

I.A.No.1 of 2017 in A.S.No.368 of 1997

Between:

1. Bussu Narsi Reddy (Died per LRs)
2. Bussu Ram Reddy S/o. Late Mr. Bussu Narsi Reddy, aged about 60 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.
3. Bussu Papi Reddy, S/o. Late Mr. Bussu Narsi Reddy, aged about 51 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.
4. Bussu Amaravathi, W/o. Late Krishna Reddy, aged about 38 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.
5. Bussu Jaipal Reddy S/o. Late Mr. Bussu Narsi Reddy, aged about 47 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.
6. Bussu Karunakar Reddy, S/o. Late Mr. Bussu Narsi Reddy, aged about 45 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.

...PETITIONERS/APPELLANTS

AND

1. Bussu Kishan Reddy, S/o. Mr. Ramchandra Reddy, aged 35 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.
2. Bussu Anjan Reddy, S/o. Late Mr. Bussu Narsi Reddy, aged 51 years, Occ: Agriculture R/o. Imamguda, Maheshwaram, R.R. District.

...RESPONDENTS/APPELLANT NO.3/RESPONDENTS

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to recall the order dated 06.01.2006 recording the compromise in A.S.No.368 of 1997 aforesaid on the file of this Hon'ble Court and direct the proceedings to be restored to file to be continued as per law, and such other and further orders be passed as may be just and proper in the circumstances of the case and in the interests of justice.

I.A. NO: 2 OF 2017 in A.S.No.368 of 1997

Between:

1. Bussu Narsi Reddy (Died per LRs)
2. Bussu Ram Reddy S/o. Late Mr. Bussu Narsi Reddy, aged about 60 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.
3. Bussu Papi Reddy, S/o. Late Mr. Bussu Narsi Reddy, aged about 51 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.
4. Bussu Amaravathi, W/o. Late Krishna Reddy, aged about 38 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.
5. Bussu Jaipal Reddy S/o. Late Mr. Bussu Narsi Reddy, aged about 47 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.
6. Bussu Karunakar Reddy, S/o. Late Mr. Bussu Narsi Reddy, aged about 45 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.

...PETITIONERS/APPELLANTS

AND

1. Bussu Kishan Reddy, S/o. Mr. Ramchandra Reddy, aged 35 years, Occ: Agriculture, R/o Imamguda, Maheshwaram, R.R. District.
2. Bussu Anjan Reddy, S/o. Late Mr. Bussu Narsi Reddy, aged 51 years, Occ: Agriculture R/o. Imamguda, Maheshwaram, R.R. District.

...RESPONDENTS/APPELLANT NO.3/RESPONDENTS

Petition under Section 5 of Limitation Act praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased condone the delay of 3985 days.

I.A. NO: 3 OF 2017 in A.S.No.368 of 1997

Between:
Bussu Amaravathi, W/o. Late Krishna Reddy, aged about 38 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.

...PETITIONERS/APPELLANTS

AND

1. Bussu Narsi Reddy (Died per LRs)
2. Bussu Ram Reddy S/o. Late Mr. Bussu Narsi Reddy, aged about 60 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.
3. Bussu Papi Reddy, S/o. Late Mr. Bussu Narsi Reddy, aged about 51 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.
4. Bussu Krishna Reddy (Died per LRs)
5. Bussu Jaipal Reddy S/o. Late Mr. Bussu Narsi Reddy, aged about 47 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.
6. Bussu Karunakar Reddy, S/o. Late Mr. Bussu Narsi Reddy, aged about 45 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.

...RESPONDENTS/APPELLANTS

7. Bussu Kishan Reddy, S/o. Mr. Ramchandra Reddy, aged 35 years, Occ: Agriculture, R/o. Imamguda, Maheshwaram, R.R. District.
8. Bussu Anjan Reddy, S/o. Late Mr. Bussu Narsi Reddy, aged 51 years, Occ: Agriculture R/o. Imamguda, Maheshwaram, R.R. District.

...RESPONDENTS/RESPONDENTS

Petition under Order 1 Rule 10 R/w Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to permit the petitioner herein to be impleaded to come on record as Appellant No. in the above First Appeal A.S.No.368 of 1997.

These petitions coming on for hearing, upon perusing the petition and affidavit filed in support thereof and upon hearing the arguments of Sri S. R. Mahajir, Advocate for the Petitioners.

This Court made the following: ORDER

This order dispossess of these applications.

I.A.No.2 of 2017 is filed to condone the delay of 3985 days in filing the application to recall the compromise. I.A.No.1 of 2017 is filed to recall the order dated 06.01.2006 recording the compromise in A.S.No.368 of 1997.

The present applications are filed by appellant Nos.2, 3 and 5 to 7. Respondent No.2 in the present applications was the 4th appellant and respondent No.1 in the present applications is the sole respondent in the appeal. For brevity, the arrangement of the parties as referred in the suit is maintained.

The plaintiff has filed the present suit for partition in respect of the agricultural land bearing Sy.Nos.243/2, 244/2 and 242/AA admeasuring Acs.2.37 guntas, Ac.5.23 guntas and Ac.4.37 guntas respectively situated at Srinagar Village, Mahesharam Mandal, Ranga Reddy District and the said suit was decreed by a common judgment dated 27.12.1996 in O.S.Nos.40 and 15 of 1993. The original defendant filed the present appeal aggrieved by the judgment and decree in O.S.No.40 of 1993 and pending the appeal, the defendant died and his legal heirs were brought on record, who are the petitioners and 2nd respondent in the present applications. While pending the appeal, it appears compromise terms were filed on 02.01.2006, which was signed on 30.12.2005, and basing on the said memorandum of compromise, this Court has recorded the compromise on 06.01.2006 and disposed of the appeal in terms of the said compromise.

The present applications are filed by the legal heirs of the original defendant, except one legal heir, i.e., 2nd respondent in the present application, to recall the compromise on the ground that the compromise was recorded in pursuance of coercion made on the appellants at the instance of the parties to the appeal with the assistance of gangster, more particularly, Nayeem and gang and out of such coercion, which was preceded by kidnapping and wrongful confinement and threatening by the gangster, sale deeds were executed on 27.12.2005 in favour of third parties in respect of the entire extent covering the subject matter of the appeal. Basing on the said sale deeds and on account of continuance of coercion, the compromise was recorded by this Court.

It is also their case that no further steps were taken to immediately report the kidnapping and threatening from the gangster in execution of the sale deed as well as recording of compromise on account of persistent threat from the gangster, till he was encountered by the police. Subsequently, the petitioners filed a criminal case against the incident after encounter of the said gangster. According to them, the police, Padisharif Police Station issued FIR No.594 of 2016 and after thorough investigation a charge sheet was filed on 22.09.2017 charging the persons against whom allegations were made in the said complaint. Pursuant to the said complaint, the present applications are filed to condone the delay as well as to recall the compromise.

Notices were given to the 1st respondent as well as the 2nd respondent in the present applications, who is one of the legal heirs of the defendant. The second respondent herein was represented by the counsel and there is no representation from the first respondent side.

The learned counsel for the second respondent/one of the legal heirs of the defendant, has submitted that prior to the memorandum of compromise, there were sale deeds executed by all the parties to the appeal proceedings conveying the property in favour of third parties and she also submitted that in pursuance of the compromise recorded in the present appeal, the other appeals, which were filed by other parties aggrieved by the common judgment, were withdrawn. She also submitted that apart from the withdrawal of some cross objections and appeals in pursuance of the compromise, they were independent compromise recorded in connected appeals, which

were filed aggrieved by either common judgment or from the connected suit arising out of the same cause of action. She also represented that the counsel, who is now representing the second respondent, was also the counsel for the petitioners as well as the present second respondent, who are the appellants in the appeal. The present applications are filed by a new counsel.

Learned counsel for the petitioners/appellants stated that even though sale deeds were anterior to the compromise terms, the terms of compromise would come in the way in challenging the sale deeds and the same may have the bearing on the adjudication of the petitioners' claim with reference to the suit, which they are going to file on the basis of the claim set up by them.

Learned counsel for the second respondent/appellant has submitted that in pursuance of compromise, without hearing them, recalling the compromise would have the adverse effect on the interest of the third party purchaser and it is also submitted that it is not known whether those purchasers subsequently have further alienated or not. Without hearing them the compromise cannot be recalled.

The fact remains that the sale deeds were anterior to the compromise. According to the counsel for the petitioners/appellants when the sale deeds are challenged, the terms of compromise have impact on the adjudication. His submission is well founded and the contention of the second respondent can also be well founded for the reason that without hearing the parties, who had interest on account of creation of sale deeds and further sale deeds, if any, compromise cannot be recalled.

To balance the interest of both the parties by protecting the interest of the petitioners/appellants, this Court feels that it is sufficient that the petitioners/appellants are given liberty to move the present application after they succeed in the suit proceedings, which they intend to take up for cancellation of the sale deeds, which are anterior to the present compromise and the sale deeds, if any, created subsequent to them. His grievance is also well founded for the reason that when the compromise terms prohibited them to challenge any sale deed, these terms will come in the way and influence the adjudication of the suit, which is going to be filed. To balance the interest of the petitioners/appellants as well as the respondents and the third parties, it is observed that the Court, which has to adjudicate validity of the sale deeds, if any challenged, should not influence by the terms of compromise and decide the said issue de-horse the compromise. This observation would protect the interest of all the parties to the proceedings.

With the above said observation and liberty, these applications can be disposed of.

In the result, both the applications are disposed of giving liberty to the petitioners/appellants to move the present application for recalling of compromise based on their success in the suit to be instituted by them for cancellation of the sale deed, which is anterior to the present compromise and any other sale deeds, if any, made. It is also made clear that the terms of memorandum of compromise or the compromise made by this Court shall not come in the way of adjudication of the suit proceedings

challenging the sale deeds to be instituted by the petitioners/appellants. It is also made clear that the rights of the parties either in the cross-objections or in the other appeals, if any, made in pursuance of this compromise, shall not come in the way of moving appropriate petitions, if the petitioners/appellants had recourse to the right of filing fresh application basing on the adjudication done in the suit.

I.A.No.3 of 2017, filed for impleadment of third party purchasers, is dismissed as not pressed.

SD/-K.SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Additional District Judge, Ranga Reddy
2. One CC to Srl S. R. Mahajir, Advocate [OPUC]
3. Two CD Copies
4. One Spare Copy

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HIGH COURT

DATED: 21/01/2022

ORDER

I.A.No.1 of 2017 (ASMP.No.477 of 2017),
I.A.No.2 of 2017 (ASMP.No.2262 of 2017) &
I.A.No.3 of 2017 (ASMP.No.4013 of 2017)
IN
A.S.NO.368 OF 1997

DISPOSING OF THE APPLICAION I.A.Nos.1 & 2 of 2017 AND
DISMISSING THE I.A.No.3 of 2017
AS NOT PRESSED

(5) VLV
5/2/22